



DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 230306-0064]

RIN 0660-XC056

National Environmental Policy Act Procedures and Categorical Exclusions

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Telecommunications and Information Administration (“NTIA”) proposes to follow First Responder Network Authority’s (“FirstNet Authority”) National Environmental Policy Act (“NEPA”) procedures on an interim basis with modifications to account for NTIA’s internal organization and establish 33 categorical exclusions (“CEs”) in compliance with NEPA, the Council on Environmental Quality (“CEQ”) regulations, and other related authorities. NTIA’s proposed CEs cover administrative, real property and facility, and operational actions that individually or cumulatively do not have a significant effect on the human environment. This process is intended to further NTIA’s compliance with the Infrastructure Investment and Jobs Act (“IIJA”) and increase NTIA’s efficiency in environmental analysis and decision making while fully meeting NEPA’s requirements.

DATES: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number], by any of the following methods:

Federal Rulemaking website: Go to <https://www.regulations.gov> and search for Docket ID NTIA-2023-0004.

Email comments to: NEPAComments@ntia.gov.

Mail comments to: National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4878, Attn: Amanda Pereira, Environmental Program Officer, Washington, DC 20230. Comments submitted by mail may be in hard copy (paper) or electronic (e.g., CD-ROM, disk, or thumb drive).

FOR FURTHER INFORMATION CONTACT: Amanda Pereira, Environmental Program Officer, at the address listed in the ADDRESSES section of this notice by electronic or regular mail as listed above, or by telephone 202-834-4016.

SUPPLEMENTARY INFORMATION:

I. Background

NTIA is the Executive Branch agency that is principally responsible for advising the President on telecommunications and information policy issues. NTIA's programs and policymaking focus largely on expanding broadband Internet access and adoption in the United States, expanding the use of spectrum by all users, and ensuring that the Internet remains an engine for continued innovation and economic growth. NTIA is engaged in a range of efforts to increase Internet access and adoption.

NTIA's Role in Implementing the Broadband Provisions of the 2021 Infrastructure Investment and Jobs Act

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act ("IIJA") into law.¹ Passage of the IIJA is a significant step forward in achieving the Biden-Harris Administration's goal of providing broadband access to the entire United States. The IIJA sets forth a \$65 billion investment into broadband; \$48.2 billion of that investment will be administered by NTIA. This investment will leverage NTIA's experience in promoting broadband infrastructure development and digital inclusion efforts.

¹ Infrastructure Investment and Jobs Act, Pub. L. 117-58 (2021).

The IIJA directs NTIA to establish five new broadband programs and provides additional funding for the previously established Tribal Broadband Connectivity Program (“TBCP”). The largest of these programs is the Broadband Equity, Access, and Deployment (“BEAD”) Program, which Congress mandated NTIA establish in no more than 180 days after the IIJA was enacted.² The BEAD Program will provide \$42.45 billion, to be distributed among states, territories, D.C., and Puerto Rico, for projects that support broadband infrastructure deployment and adoption. The IIJA requires that NTIA obligate all funds appropriated for the BEAD program in an expedient manner.³ One billion dollars will also be appropriated to NTIA for the creation of the Enabling Middle Mile Broadband Infrastructure Program. The purpose of this grant program is to expand and extend middle mile infrastructure to reduce the cost of connecting unserved and underserved areas to the Internet backbone. An additional \$2.75 billion will be distributed through the Digital Equity Act Programs to promote digital inclusion and equity to ensure that all individuals and communities have the opportunity to acquire the same skills, technology, and capacity needed to engage in the Nation’s digital economy. These programs include the State Digital Equity Planning Grant Program, a \$60 million formula grant program for states and territories to develop digital equity plans; the State Digital Equity Capacity Grant Program, a \$1.44 billion formula grant program for states and territories to implement digital equity projects and support the implementation of digital equity plans; and the Digital Equity Competitive Grant Program, a \$1.25 billion discretionary grant program for specific types of political subdivisions to implement digital equity projects.

Additionally, the IIJA provides \$2 billion to NTIA’s existing TBCP. The TBCP directs funding to Tribal governments to be used for broadband deployment on Tribal lands, as well as for telehealth, distance learning, broadband affordability, and digital inclusion.

To facilitate NTIA’s compliance with the IIJA and because of the critical need to expand and secure broadband access across the United States, NTIA must find opportunities to accelerate provision of its appropriated funding while ensuring it complies with all relevant authorities, including NEPA.

² *Id.* at 60102(b).

³ *Id.* at 60102(b)(3).

National Environmental Policy Act

NEPA requires Federal agencies to undertake an assessment of and consider in their decision making the environmental effects of their proposed actions and involve the public prior to making a final decision and implementing the action. NEPA applies to any Federal project, decision, or action, including grants, that may significantly affect the quality of the human environment.⁴ NEPA also established the Council on Environmental Quality (“CEQ”), which issued regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The CEQ regulations require Federal agencies to adopt, as necessary, their own implementing procedures to supplement CEQ’s regulations, and to establish and use Categorical Exclusions (“CEs”) to define categories of actions that normally do not individually or cumulatively have a significant effect on the human environment.⁵ These particular actions, therefore, normally do not require further NEPA review in the form of either an environmental assessment (“EA”) or an environmental impact statement (“EIS”).

A CE does not exempt an action from NEPA review; rather, it is one form of environmental review under NEPA. An agency may apply a CE to a proposed action after the agency has carefully reviewed and determined that the action fits within the category of actions encompassed by the CE. In making this determination, the decision maker must also consider whether extraordinary circumstances apply, which can indicate that a normally excluded action might have a significant environmental effect. Thus, a CE does not eliminate environmental review of a proposed action but reduces paperwork and delay and allows an agency to efficiently focus its resources on proposed actions with the potential for significant environmental effects.

Presently, CEQ is undertaking a multiphase rulemaking process to review and revise the NEPA implementing regulations.⁶ CEQ has provided agencies additional time to propose updates to their NEPA procedures to be consistent with the CEQ regulations.⁷ Therefore, NTIA is proposing to establish new

⁴ See 42 U.S.C. 4332(2)(C).

⁵ 40 CFR 1508.1(d), 1507.3; CEQ, Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act, 75 FR 75628 (Dec. 6, 2010).

⁶ 86 FR 55759 (Oct. 7, 2021).

⁷ 86 FR 34154 (June 29, 2021).

CEs and otherwise follow the existing implementing procedures of the FirstNet Authority, an independent authority within NTIA, in the interim while CEQ completes its rulemaking processes. Following the FirstNet Authority's procedures will facilitate the IJIA's large-scale investment in NTIA programs and the need for NTIA to fulfill the mandates of the IJIA in a timely manner, by ensuring NTIA make the most efficient use of time and available funding and resources to fulfill its environmental analysis and decision-making responsibilities.

Following CEQ's revisions to the NEPA regulations, NTIA intends to propose comprehensive NEPA procedures. In the interim, in this notice, NTIA proposes two additions to the FirstNet Authority procedures. First, it explains how NTIA would interpret provisions specific to the FirstNet Authority in the NTIA context. Second, NTIA proposes to establish CEs specific to NTIA's action; NTIA would not apply the FirstNet Authority CEs.

NTIA's Relationship to the FirstNet Authority

The FirstNet Authority is an independent authority within NTIA.⁸ The FirstNet Authority's statutory mission is to take all actions necessary to ensure the establishment and operation of a nationwide public safety broadband network. On April 29, 2014, the FirstNet Authority finalized its NEPA implementing procedures.⁹ These procedures provide the framework for the FirstNet Authority's establishment of a NEPA compliance program and application of the appropriate level of NEPA review for major Federal actions related to the deployment of a nationwide public safety broadband network. More specifically, FirstNet Authority's NEPA implementing procedures supplement CEQ regulations and provide guidance to FirstNet Authority employees and potential applicants regarding procedural requirements for the application of NEPA. In 2018, the FirstNet Authority modified its NEPA implementing procedures, CEs, and related extraordinary circumstances to ensure that they aligned with the FirstNet Authority's statutory mission, activities, and experience, and better assisted the FirstNet Authority in complying with NEPA and the Federal Communications Commission's regulations.

⁸ 47 U.S.C. 1401.

⁹ FirstNet, National Environmental Policy Act Implementing Procedures and Categorical Exclusions, 79 FR 23945 (Apr. 29, 2014).

The FirstNet Authority published its final, revised procedures on February 1, 2018.¹⁰ FirstNet Authority's NEPA implementing procedures are available at: <https://firstnet.gov/newsroom/resources/federal-register-notices/notice-revised-national-environmental-policy-act>.

Relevance of FirstNet Authority Implementing Procedures to NTIA Actions

As a newly created entity, the FirstNet Authority did not have any existing CEs, yet it was responsible for, at a minimum, ensuring nationwide standards for the use of and access to the network; issuing open, transparent, and competitive requests for proposals ("RFPs") to build, operate, and maintain the network; encouraging these RFPs to leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network; and overseeing contracts with non-Federal entities to build, operate, and maintain the network.

The FirstNet Authority, similar to NTIA's grant programs, is mandated to plan and construct telecommunication and broadband infrastructure across the United States and its territories. The specific activities anticipated to be funded by NTIA are comparable to the FirstNet Authority project implementation activities. The origins of FirstNet's CEs and implementing procedures are based upon NTIA's prior broadband projects. Therefore, by utilizing this experience and existing CEs and implementing procedures NTIA is building what has come before at both NTIA and FirstNet.

Much of NTIA's environmental activities over the last three decades have been through the administration of broadband grants through the Public Safety Interoperable Communications ("PSIC"), Broadband Technology Opportunities Program ("BTOP"), and current grant programs. Due to the similarity in project activities and scope, the FirstNet Authority established its CEs based primarily on the then existing CEs that were approved and applied by NTIA in the implementation of the BTOP. Each BTOP CE was reviewed and deliberated in concept, coverage, applicability, and wording and supported by an administrative record for each of the CEs to ensure they fulfilled the goal of balancing increased administrative efficiency in NEPA compliance with avoidance of misinterpretations and misapplications

¹⁰ FirstNet, First Responder Network Authority; Revised National Environmental Policy Act Procedures and Categorical Exclusions, 83 FR 4632 (February 1, 2018).

of exclusionary language that could lead to non-compliance with NEPA requirements. The FirstNet Authority determined, and CEQ concurred, that all of the BTOP CEs met both objectives. The BTOP CEs were comparable to the FirstNet Authority's actions because they (1) related to planning, deployment, and construction of broadband infrastructure; (2) utilized the same methods and equipment of installing broadband infrastructure; (3) were not restricted to an environmental setting or geographic region of the country; and (4) were subject to review for extraordinary circumstances.

Most importantly, the specific activities anticipated to be funded by NTIA are comparable to the FirstNet Authority project implementation activities as they will primarily include the installation of fiber optic cables, cell towers, antenna collocations, buildings, and power units. The FirstNet Authority is also required to leverage, to the maximum extent economically desirable, existing commercial infrastructure in its deployment and operation of its network. The geographic scope of the FirstNet network, like NTIA's grant programs, encompasses all U.S. states and territories. Thus, the actions funded by NTIA's grant programs will likely occur in a wide range of environmental settings, like FirstNet Authority actions, and will be consistent with the environmental review process for analyzing proposed actions and making NEPA determinations based on the specific location and type of proposed project activities, of which the CEs would be an integral part. Accordingly, because the characteristics of the actions in deploying and operating a nationwide network are comparable in intensity, scope, and geography to NTIA's programs, and based on the outcomes of the FirstNet Authority applying these procedures to its network, NTIA has determined that the FirstNet Authority's NEPA implementing procedures including their CEs are relevant to NTIA actions and have been helpful to NTIA as it develops its own implementing procedures and CEs.

Use of FirstNet Authority's Implementing Procedures

As discussed elsewhere, the missions, geographic scopes, environmental settings, characteristics and technologies of proposed projects, and, more importantly, outcomes for the application of the FirstNet Authority implementing procedures are expected to be similar when used for the NTIA's expected programmatic activities and grant programs. Ultimately, the proposed adoption of these

procedures is designed to assist decision makers within the bureau that fund, assist, plan, and construct telecommunication and broadband infrastructure across the United States and its territories.

The FirstNet Authority procedures incorporate CEQ's NEPA implementing regulations at 40 CFR Part 1500–1508 as well as guidance on various environmental resource areas issued by CEQ. With the exception of its *Roles and Responsibilities* section, which will be covered through internal NTIA-specific guidance, NTIA expects to implement the existing procedures consistent with how they are written and currently executed by the FirstNet Authority. Since the FirstNet Authority drafted these procedures for consistency with and to minimize repetition of CEQ regulations, the procedures would endure changes to the CEQ regulations and function alongside any internal NTIA-specific guidance. For instance, terminology used throughout the procedures are consistent with that found in CEQ regulations (40 CFR 1508.1), general discussion of environmental review and document development processes are consistent with 40 CFR 1501-1502 and guidance,¹¹ public involvement procedures are consistent with 40 CFR 1503 and guidance, and the list of authorities is consistent with those followed by NTIA. Lastly, since part of this process was to develop NTIA-specific categorical exclusions to be used for its programs, NTIA does not expect to use or adopt the categorical exclusions developed by the FirstNet Authority and presented in the procedures. NTIA feels that those being proposed herein are specific enough and would be more than adequate to execute NTIA's mission and NEPA activities. While FirstNet's CEs are relevant and were helpful in this development, NTIA determined to implement its own specific CEs to more specifically address its own needs and programs.

Development of Categorical Exclusions

NTIA has developed these proposed CEs consistent with the CEQ Regulations at 40 CFR 1501.4 and 1507.3, as well as CEQ's 2010 guidance memorandum on establishing, applying, and revising CEs. In accordance with CEQ's 2010 memorandum, NTIA reviewed and analyzed past actions, including their supporting NEPA documentation, to develop initial proposals of potential CEs. NTIA also identified CEs of

¹¹ Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (CEQ, 1986); Guidance Regarding NEPA Regulations (CEQ, 1983); and Establishing, Applying, and Revising Categorical Exclusions under NEPA (CEQ, 2010).

numerous other Federal agencies that are sufficiently descriptive to demonstrate to NTIA that the activities that fall within these CEs are similar in nature, scope, and impact on the human environment to those performed by NTIA. Thus, NTIA proposes to substantiate its CEs by relying on previously implemented actions and benchmarking other agencies' CEs, both of which are methods recommended by CEQ to substantiate new or revised CEs.¹² Benchmarking means that NTIA is substantiating its proposed CE based on other agencies' experience with a comparable CE and the administrative record developed by other agencies when they established those comparable CEs. To ensure the CEs that NTIA proposes to benchmark properly support NTIA's proposed CEs, NTIA analyzed the actions encompassed by the other agencies' CEs by considering the characteristics of the actions, methods of implementing the actions, frequency of the actions, applicable standard operating procedures or implementing guidance, and timing and context. NTIA used this information to determine that the actions analyzed by these agencies are sufficiently similar to those covered by the proposed CE to support NTIA's conclusion that the actions covered by NTIA's proposed CEs will not result in individually or cumulatively significant impacts on the human environment under normal circumstances. NTIA also relied on its own experience with previously implemented actions (*e.g.*, EAs that resulted in findings of no significant impact) to determine that the analyses of those actions and the resulting absence of environmental effects of those actions support the proposed CE. NTIA is establishing these CEs as a means to reduce delay and fulfill its mandates under the IJA, consistent with NEPA, the CEQ Regulations, and other related authorities.

When applying CEs, NTIA will do so consistently with CEQ's 2010 memorandum. When determining whether to use a CE for a proposed action, NTIA will carefully review the description of the proposed action to ensure that it fits within the category of actions described in the CE. Next, NTIA will consider the specific circumstances associated with the proposed action, to rule out any extraordinary circumstances that might give rise to significant environmental effects requiring further analysis and documentation in an EA or an EIS. The consideration of extraordinary circumstances may include

¹² 75 FR 75628.

professional judgement for administrative or non-technical proposals or those that do not include ground disturbance to environmental due diligence reports and consultations or other environmental documentation for proposals that are more involved or include ground disturbance. In other words, when evaluating whether to apply a CE to a proposed action, NTIA will consider the specific circumstances associated with the proposed action and will not end its review based solely on the determination that the proposed action fits within the description of the CE; rather, NTIA will also consider whether there are extraordinary circumstances that would warrant further NEPA review. Generally, NTIA would use a Memorandum for Record to document project-level CE decisions and a Memorandum to File to document programmatic CE decisions; furthermore, NTIA would use discretion when determining whether to document those CEs with the lowest potential for environmental impact and extraordinary circumstances, such as Proposed Categorical Exclusion A-1.

NTIA's proposed CEs are organized into three series, based on the types of activities encompassed by each group. Series A encompasses proposed CEs that pertain to administrative actions. Series B encompasses proposed CEs related to real property or facility actions. Series C sets forth proposed CEs that pertain to operational actions. NTIA has developed an administrative record supporting the establishment of these CEs, which provides a description of and analysis for each proposed CE. NTIA invites comments on the CEs and analysis contained in the administrative record, which is available at: [Publications | National Telecommunications and Information Administration \(ntia.gov\)](https://publications.ntia.gov/).

II. Regulatory Notices

Paperwork Reduction Act

This notice does not contain collection-of-information requirements subject to the Paperwork Reduction Act ("PRA") of 1995 (44 U.S.C. 3501). Notwithstanding any other provisions of law, no person is required to, nor shall a person be subject to penalty for failure to comply with, a collection of information subject to the requirements of PRA unless that collection of information displays a currently valid Office of Management and Budget ("OMB") control number.

Environmental Impact

Implementing FirstNet Authority's existing NEPA implementing procedures and these CEs are intended to supplement CEQ regulations. CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of their responsibilities under NEPA. The requirements for establishing NEPA procedures are set forth at 40 CFR 1507.3.

III. Proposed Categorical Exclusions and Extraordinary Circumstances

Categorical Exclusions

Administrative Actions

A-1 Personnel, fiscal, management, and administrative activities, including recruiting, processing, paying, recordkeeping, budgeting, personnel actions, contract administration, and travel.

A-2 Preparation, modification, and issuance of policy directives, rules, regulations, procedures, guidelines, guidance documents, bulletins, and informational publications that are of an administrative, financial, legal, technical, or procedural nature, for which the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be, in whole or part, subject later to the NEPA process, either collectively or on a case-by-case basis.

A-3 Studies and engineering undertaken to define proposed actions or alternatives sufficiently so that environmental effects can be assessed.

A-4 Planning, educational, informational, or advisory activities provided to other agencies, public and private entities, visitors, individuals, or the public, including training exercises and simulations conducted under appropriately controlled conditions and in accordance with all applicable laws, regulations, and requirements.

A-5 Software development, data analysis, or testing that does not involve ground disturbing activities.

A-6 Preparation and dissemination of scientific results, studies, surveys, audits, reports, plans, papers, recommendations, and technical advice.

A-7 Technical assistance to other Federal, Tribal, State, and local agencies or the public.

A-8 Routine procurement, use, storage, transportation, and disposal of non-hazardous goods and services in support of administrative, operational, or maintenance activities in accordance with Executive Orders and Federal procurement guidelines. Examples include office supplies and furniture; equipment; mobile assets (*i.e.*, vehicles, vessels, aircraft); utility services; and deployable emergency response supplies and equipment.

A-9 Purchase of deployable mobile and portable telecommunications equipment (*e.g.*, radios, Cell on Wheels, Cell on Light Truck, System on Wheels) that will be housed in existing facilities when not deployed.

A-10 Routine use of hazardous materials (including procurement, transportation, distribution, and storage of such materials) and reuse, recycling, and disposal of solid, medical, radiological, or hazardous waste in a manner that is consistent with all applicable laws, regulations, and requirements. Examples include use of chemicals for laboratory applications; refueling of storage tanks; temporary storage and disposal of solid waste; disposal of waste through manufacturer return and recycling programs; and hazardous waste minimization activities, including source reduction activities and recycling.

A-11 Reductions, realignments, or relocation of personnel, equipment, or mobile assets that do not result in changing the use of NTIA facilities or space in such a way that could cause a change to existing environmental effects or exceed the infrastructure capacity outside of NTIA-managed property. An example of exceeding the infrastructure capacity would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.

A-12 Federal assistance, grants, and external funding for activities that do not concern environmental matters or where the environmental effects are negligible. Examples of relevant activities could include, but are not limited to, planning, studies, or programs such as the Digital TV transition, which provided

rebates to consumers to subsidize the purchase of digital antennas, that have no potential to impact the environment. If an analysis determined that such activities had the potential to impact the environment, the CE could not be applied.

A-13 Contracts, collaborative research agreements, cooperative research and development agreements, interagency agreements, and other agreements that do not concern environmental matters or where the environmental effects are negligible.

Real Property/Facility Actions

B-1 Maintenance of facilities, equipment, and grounds. Examples include interior utility work, road maintenance, window washing, lawn mowing, landscaping, weed management/maintenance, trash collecting, facility cleaning, and snow removal.

B-2 Internal modifications, renovations, or additions (*e.g.*, computer facilities, relocating interior walls) to structures or buildings that do not result in a change in the functional use of the property.

B-3 Exterior renovation, addition, repair, alteration, and demolition projects affecting buildings, roads, grounds, equipment, and other facilities, including subsequent disposal of debris, which may be contaminated with hazardous materials, lead, or asbestos. Hazardous materials must be disposed of at approved sites in accordance with all applicable laws, regulations, and requirements. Examples include the following:

- (i) Painting, roofing, siding, or alterations to an existing building;
- (ii) Adding a small storage shed to an existing building;
- (iii) Retrofitting for energy conservation, including weatherization, installation of timers on hot water heaters, installation of energy efficient lighting, and installation of low-flow plumbing fixtures; or
- (iv) Closing and demolishing a building not eligible for listing under the National Register for Historic Places.

B-4 Abatement of hazardous materials from existing facilities, including asbestos and lead based paint, conducted in compliance with all applicable laws, regulations, and requirements established for the protection of human health and the environment. Examples include containment, removal, and disposal of lead-based paint or asbestos tiles and asbestos-containing materials from existing facilities, remediation of hazardous materials in accordance with all applicable laws, regulations, and requirements as part of facility and space management activities.

B-5 Acquisition, installation, operation, and removal of communications systems (including fiber optic cable), data processing equipment, and similar electronic equipment in or from existing facilities. Examples include purchasing, installing, decommissioning, and removing routers, repeaters, switches, cable, computers equipment, office equipment, and other related equipment in existing facilities.

B-6 Proposed new activities and operations conducted in an existing structure that would be consistent with previously established safety levels and would not result in a change in use of the facility. Examples include new types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

B-7 Acquisition or use of space within existing facilities or portion thereof by purchase, lease, or use agreement where use or operation will remain unchanged. Examples include acquiring office space through lease, purchase, or use agreement, and acquisition of laboratory space through lease, purchase, or use agreement.

B-8 Transfer of administrative control over real property, including related personal property, between another Federal agency and NTIA that does not result in a change in the functional use of the property. Examples include transfer of facilities for use by NTIA, transfers of computer equipment, office equipment, and personal property, including laptops and cell phones.

B-9 Decisions and actions to close facilities, decommission equipment, or temporarily discontinue use of facilities or equipment, where the facility or equipment, including office equipment,

telecommunications equipment, and computer equipment, is not used to prevent or control environmental impacts.

B-10 The determination and disposal of real property, such as excess office space, or personal property, including laptops and cell phones, that is excess to the needs of NTIA, when the real property or personal property is excessed in conformity with applicable General Services Administration procedures or is statutorily authorized to be excessed.

Operational Actions

C-1 Research activities conducted in laboratories and facilities where research practices and safeguards prevent environmental impacts. Examples include types of research, development, testing, and evaluation activities, and laboratory operations conducted within existing enclosed facilities designed to support research and development activities.

C-2 Outdoor research activities conducted in compliance with all applicable laws, regulations, and requirements. Examples include types of research, development, testing, and evaluation activities conducted outdoors where no new ground disturbance occurs and no sensitive resources (*e.g.*, threatened or endangered species, archaeological sites, Tribal resources, wetlands, and waterbodies) are present, such as radar testing, radio noise measurements, and public safety communications research.

C-3 Periodic flight activities for training and research and development, that are routine and comply with all applicable laws, Federal Aviation Administration regulations, and other requirements.

C-4 New construction or improvement of operations or support facilities, switching stations, maintenance facilities, and other non-tower structures on previously disturbed ground, with no more than 1 acre (0.4 hectare) of ground disturbance, where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards, and will not require additional support infrastructure.

C-5 Installing, operating, maintaining, retrofitting, upgrading, repairing, removing, and/or replacement of existing microwave or radio communication towers, instruments, structures, or buildings that do not require ground disturbance outside of the original footprint, including installing or collocating equipment such as antennas, microwave dishes, or power units. For communication towers at or below 199 feet, renovations and equipment additions must not cause the total height of the tower to exceed 199 feet. Existing structures must not be eligible for listing under the National Register of Historic Places.

C-6 New construction or improvement of temporary buildings or experimental equipment (*e.g.*, trailers, prefabricated buildings, and test slabs) on previously disturbed ground, with no more than 1 acre (0.4 hectare) of ground disturbance, where the proposed facility use is generally compatible with the surrounding land use and applicable zoning standards and will not require additional support infrastructure.

C-7 New construction of self-supporting (*e.g.*, monopole or lattice) wireless communication towers at or below 199 feet with no guy wires that require less than 1 acre (0.4 hectare) of ground disturbance, and where another Federal agency would not require an EA or EIS for its acquisition, installation, operations, or maintenance.

C-8 Changes to existing transmission lines or aerial fiber optic cable that involve less than 20 percent pole replacement, only where either the same or substantially equivalent support structures at the approximate existing support structure locations are used. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction.

C-9 Acquisition, installation, reconstruction, repair by replacement, and operation of utility (*e.g.*, water, sewer, electrical), communication (*e.g.*, fiber optic cable, data processing cable and similar electronic equipment), and security systems that use existing rights-of-way, easements, grants of license, distribution systems, facilities, or similar arrangements.

Extraordinary Circumstances

Extraordinary Circumstances that may preclude the use of a CE include:

1. Reasonable likelihood that the proposed action occurs within an environmentally sensitive or unique¹³ geographic area of notable recreational, ecological, scientific, cultural, scenic, or aesthetic importance.
2. Reasonable likelihood that the proposed action impacts species listed or proposed to be listed as Endangered or Threatened Species or have adverse effects on designated Critical Habitat for these species.
3. Reasonable likelihood that the proposed action impacts migratory birds or their habitats.
4. Reasonable likelihood that the proposed action adversely affects historic, archeological, or cultural sites, including Native American Traditional Cultural Properties, properties listed or eligible for listing on the National Register of Historic Places, or land identified by archeologists as having high potential to contain archeological resources.
5. Reasonable likelihood that the proposed action restricts access to and ceremonial use of Indian sacred sites by Indian practitioners or adversely affect the physical integrity of such religious sacred sites.
6. Reasonable likelihood that the proposed action adversely impacts waterbodies, wetlands, floodplains, water quality, sole source aquifers, public water supply systems, or state, local, or tribal water quality standards established under the Clean Water Act or the Safe Drinking Water Act.

¹³ “Environmentally sensitive or unique” resources and areas may include, but are not limited to: all federal lands; areas having special designation or recognition such as prime or unique or agricultural lands; designated wilderness or wilderness study areas; wild and scenic rivers; 100-year or 500-year floodplains; coastal zones; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas containing proposed or federally listed threatened or endangered species, or their designated critical habitat (including species and habitat listed under the Endangered Species Act of 1973 (16 U.S.C. part 1531 *et seq.*); Migratory Bird Treaty Act of 1918 (16 U.S.C. part 703 *et seq.*) and Bald and Golden Eagle Act of 1940, (16 U.S.C. part 668 *et seq.*)); areas of critical environmental concern; or other areas of high environmental sensitivity.

7. Reasonable likelihood that the proposed action has a disproportionately high and adverse effect on low-income populations or minority populations.
8. Reasonable likelihood that the proposed action involves construction on or near an active, inactive, or abandoned contaminated or hazardous waste site, or involve generation, transportation, treatment, storage, or disposal of substances hazardous to human health or the environment.
9. Reasonable likelihood that the proposed action involves the generation of ionizing or non-ionizing radiation or use of any radiation in excess of the Federal Communications Commission's established Maximum Permissible Exposure limits for human exposure to Radiofrequency Electromagnetic Energy fields.
10. Reasonable likelihood that the proposed action is controversial because of the introduction or employment of unproven technology, highly scientifically uncertain or unique environmental effects, substantial disagreement over the possible size, nature, or effect on the environment, or likelihood of degrading already existing poor environmental conditions.
11. Reasonable likelihood that the proposed action violates a Federal, Tribal, state, or local law, regulation, policy, or requirement imposed for the protection of the environment.
12. Reasonable likelihood that the proposed action is of a greater size or scope than is normal for an action of its type.
13. Reasonable likelihood that the proposed action has any other impacts on human health or the environment that have not been otherwise addressed.

Stephanie Weiner,

Acting Chief Counsel,

National Telecommunications and Information Administration.

